

JOINT POWERS AGREEMENT
FOR MANAGEMENT OF THE REDI MIDDLE-MILE BROADBAND NETWORK
BY AND AMONG THE NORTH CENTRAL NEW MEXICO ECONOMIC
DEVELOPMENT DISTRICT, THE INCORPORATED COUNTY OF LOS ALAMOS,
SANTA FE COUNTY, THE CITY OF ESPANOLA, RIO ARriba COUNTY, OHKAY
OWINGEH, THE PUEBLO OF SANTA CLARA, THE PUEBLO OF POJOAQUE,
AND THE PUEBLO OF TESUQUE

THIS JOINT POWERS AGREEMENT (the "Agreement") is entered into by and among the Incorporated County of Los Alamos, New Mexico, Santa Fe County, New Mexico, the City of Espanola, New Mexico, Rio Arriba County, New Mexico, Ohkay Owingeh, the Pueblo of Santa Clara Pueblo, the Pueblo of Pojoaque and the Pueblo of Tesuque (each a "Local Party" and together, the "Local Parties"), and the North Central New Mexico Economic Development District (hereinafter "NCNMEDD" and, together with the Local Parties, the "Parties").

WHEREAS, NCNMEDD is a Council of Governments formed in 1967 under the authority of the Joint Powers Agreement Act, Section 4-22-1 to 4-22-7, New Mexico State Statutes Annotated, 1953 Compilation;

WHEREAS, the Incorporated County of Los Alamos, New Mexico, Santa Fe County, New Mexico, the City of Espanola, New Mexico, Rio Arriba County, New Mexico are each New Mexico municipalities or counties, created and existing pursuant to the Constitution and laws of the State of New Mexico (the "State"); and

WHEREAS, Ohkay Owingeh, the Pueblo of Santa Clara Pueblo, the Pueblo of Pojoaque and the Pueblo of Tesuque are each Federally Recognized Tribes, existing as independent and self-governing sovereigns; and

WHEREAS, northern New Mexico currently lacks affordable, high-speed broadband services to support economic development, education and distance learning, health care and telemedicine, and advanced public safety and energy applications required to improve the quality of life and ensure the health, safety and welfare of the region's residents; and

WHEREAS, NCNMEDD applied for and was awarded federal funds from the Broadband Technology Opportunities Program ("BTOP"), National Technology and Information Administration ("NTIA"), US Department of Commerce (the "BTOP Grant"), for the REDI Middle-Mile Network (hereinafter "REDI Net"), a high-speed, open access broadband network to be deployed within the jurisdictional boundaries of the Local Parties in northern Santa Fe County, Los Alamos County and southern Rio Arriba County, New Mexico; and

WHEREAS, the construction cost of REDI Net is estimated to be \$13,391,443.00, which will be paid with federal funds in the amount of \$10,565,792.00, and \$2,825,651.00 in cash and in-kind match contributed by the Local Parties and other regional entities as described in Section 3 below; and

WHEREAS, as the BTOP Grant recipient, NCNMEDD, is directly responsible for assuring that the expenditure of BTOP Grant funds in connection with the design, construction and implementation of REDI Net complies with the Federal Requirements; and

WHEREAS, REDI Net consists of approximately 150 miles of fiber optic cable and associated equipment which crosses the jurisdictional boundaries of the Local Parties and will be installed primarily on existing electric utility poles; and

WHEREAS, subject to the availability of sufficient annual appropriations, the Local Parties will be responsible for securing necessary easements and rights of way, for construction, permitting and other construction-related activities and oversight, and have direct interests in assuring that the design, construction and implementation of REDI Net will meet their local needs and requirements, within the framework of the BTOP Grant provisions and the Federal Requirements as that term is defined in Section 1 below; and

WHEREAS, based on their respective interests and responsibilities, NCNMEDD and the Local Parties recognize that they should collectively manage the design, construction, implementation, and operation of REDI Net in a manner that enables NCNMEDD, as BTOP Grant recipient, to monitor and assure compliance with all BTOP Grant and the Federal Requirements; and

WHEREAS, NCNMEDD shall act as the fiscal agent for REDI Net and shall be responsible for all reporting and assuring compliance required by the BTOP grant; and

WHEREAS, the Parties share common powers with respect to providing infrastructure and promoting economic development, education and public safety for the benefit of their residents ;

WHEREAS, the Parties are authorized by the Joint Powers Agreements Act, Sections 11-1-1 through 11-1-7 NMSA 1978 (the "Act"), to create a joint powers authority for the purpose of exercising powers common to the Parties; and

WHEREAS, the Parties desire to create a joint powers authority pursuant to the Act for the purposes described in, and subject to the requirements of, this Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

Section 1. Compliance with Grant Funding Requirements. The Parties shall construct, implement and manage REDI Net in compliance with the American Recovery and Reinvestment Act of 2008 ("ARRA") and all federal regulations promulgated in

relation thereto; the requirements of BTOP, including the Notice of Federal Funding Opportunity ("NOFA") and the grant agreement and conditions; and the purposes for which the BTOP grant was made, and all Federal Communications Commission requirements now in effect or as may become effective the during of this Agreement (collectively, the "Federal Requirements"). Changes to the grant agreement for REDI Net, including but not limited to engineering design, organizational model, business plan, service offerings, rate structure, and disposal or transfer of all or part of REDI Net's physical assets may require approval from the NTIA, and the United States Department of Commerce. The Parties hereby affirm the core purposes and operational details of REDI Net:

- A. Open Access Network: REDI Net shall offer wholesale bandwidth to all qualified service providers within the range of its network at reasonable rates and, where practicable, below-market rates as an open access network intended to encourage competition, improve service, increase customer choice and reduce costs to the end user;
- B. Community Institutions and Rates: REDI Net shall provide high-speed broadband services to community anchor institutions within the range of its network, which shall include government buildings , Schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment and support services to facilitate the greater use of broadband service by vulnerable populations, including low-income, unemployed and senior citizens, at affordable rates determined by reference to prevailing market rates;
- C. Reinvestment of Revenues: As required by the BTOP Grant, all revenues generated by the network shall be reinvested by the REDI Net Board ("REDI Net Board" as further described in Section 2 of this Agreement) in expansion, operation and maintenance of the network, and shall not be distributed to the Parties or any individual Party; and
- D. Public-Private Partnerships: REDI Net shall employ the private sector partnerships identified in the BTOP grant application, including in-kind network management by Kit Carson Telecom for three (3) years, and long-term outside plant operation and maintenance by Jemez Mountains Electric Cooperative and the Los Alamos County Utility Department; and
- E. Applicable Policy: BTOP Grant and project implementation for REDI Net shall follow the adopted policies of NCNMEDD, including but not limited to procurement and accounting policies,

the NCNMEDD code of conduct and the Federal Code of Conduct, as required by the BTOP grant. In executing this agreement, each party acknowledges and agrees that it has received and read each of the above-referenced policies and agrees to bound by the terms of the policies in the REDI Net project implementation and management.

Section 2. Governance of REDI Net. REDI Net will be governed by the Parties through the REDI Net Board pursuant to the following conditions:

- A. Membership: The REDI NET Board shall be composed of one representative from each Local Party, appointed by the governing body of each Party, and one representative of NCNMEDD appointed by its governing body.
- B. Qualifications: REDI NET Board members should have expertise, professional experience and/or education in telecommunications, engineering, finance and/or business management.
- C. Responsibility: Each REDI NET Board member shall provide regular updates to its governing body on REDI Net activities and decisions, and shall request governing body guidance and input on REDI Net activities and decisions, as required.
- D. Terms: There is no maximum term for service on the REDI NET Board. Each member shall be appointed by the governing body it represents for at least one (1) year. The governing body may appoint a new member to the REDI NET Board at any time after the initial one-year term, provided however, that any member may be terminated by its governing body in its sole discretion with or without cause. If any member misses three (3) consecutive meetings, the governing body shall appoint a new member to the REDI NET Board no later than the next meeting of the REDI Net Board .
- E. Purpose of the REDI NET Board and Common Powers of the Parties: The REDI NET Board is established to oversee construction, implementation, and long-term management of REDI Net. The REDI NET Board shall have the following powers:
 - (i) To adopt bylaws, procedures, processes or criteria for the conduct of its affairs as it deems necessary or convenient.
 - (ii) To make all decisions relating to REDI Net's construction, operation and maintenance during the three (3) year grant period, including but not limited to:

- (a) Contracts for professional services, construction and any other contracts needed during the three (3) year grant period;
 - (b) Identification of a long-haul transport provider; and
 - (c) Additional private sector partnerships not contemplated in the BTOP grant application for infrastructure and/or services.
- (iii) To manage REDI Net's long-term operation, management and maintenance, including but not limited to:
- (a) Entering into contracts for marketing, network operations, service-provider recruitment and all other contracts;
 - (b) Entering into agreements with Local Parties and third parties for the provision of broadband service ("Service Agreements");
 - (c) Making other contractual or administrative arrangements for REDI Net management, which may include, without limitation, contracting with a third party or parties for management services, delegating management responsibility to one or more Parties, or entering into other legally permissible agreements or arrangements for management of REDI Net;
 - (d) Forming partnerships, agreements or business arrangements to the extent that the Parties are permitted by law to do so;
 - (e) Developing and approving an annual budget, to include projecting sufficient revenue for operations and maintenance on a multi-year basis;
 - (f) Formulating Network expansion plans;
 - (g) Establishing criteria for revenue reinvestment; and
 - (h) Establishing revenue reinvestment capital improvements plan.

F. Meetings: Meetings of the REDI NET Board shall be held at least quarterly and at such additional times and in such locations as the REDI NET Board or NCNMEDD determines. It is anticipated that meetings will occur more frequently during the BTOP Grant period.

G. Meeting Protocol: REDI NET Board meetings shall be held in compliance with the New Mexico Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978. NCNMEDD shall keep minutes of all REDI NET Board meetings. As provided in the bylaws or other procedures adopted by the REDI Net Board, each REDI NET Board member shall be entitled to cast one vote in connection with any action to be taken by the REDI NET Board.

Section 3. Financial Contributions of the Local Parties. The Local Parties shall provide the contributions described in this Section to fulfill the required cash and in-kind match requirements for the BTOP grant with twenty percent (20%) non-federal funds (the "Local Match Requirement"). In no event shall the aggregate amount of the contributions by the Local Parties fall below the Local Match Requirement.

A. Los Alamos County shall deposit \$400,000 in cash into NCNMEDD's interest-bearing project account for REDI Net no later than December 31, 2010;

B. Rio Arriba County shall deposit at least \$50,000.00 in cash into NCNMEDD's interest-bearing account for REDI Net each month for fourteen (14) months, or until \$700,000.00 is deposited in the account, beginning July 31, 2011;

C. REDI Net shall dedicate \$170,000.00 in cash from program income during or before the last three months of network construction;

D. Los Alamos County shall provide existing conduit, fiber, and a secondary Point of Presence facility, together valued at \$625,000.00, as an in-kind contribution which shall be incorporated into REDI Net;

E. The City of Espanola shall provide \$20,000.00 in existing fiber optic infrastructure as an in-kind contribution which shall become part of REDI Net; and

F. Other cash and in-kind contributions governed by separate agreements are hereby incorporated by reference:

(i) Los Alamos National Security, LLC: Cash contribution of \$170,000.00;

(ii) Northern New Mexico College: In-kind contribution valued at \$5,000.00 to provide a fiber operation and maintenance training program for electric utility linemen; and

(iii) Jemez Mountains Electric Cooperative: In-kind contribution of pole attachment fees valued at \$686,000.00.

G. Contributions of tribal land for this project are hereby recognized as substantial financial contributions to REDI Net, although their value was not calculated for the BTOP grant. Recognizing tribal infrastructure ownership in REDI Net and REDI Net's status as a publically-owned network that relies on reinvestment, the Local Parties that are tribal governments have established valuations of their lands to record their initial contributions to REDI Net; provided, that these valuations shall apply for the purposes of this agreement only and are not intended to reflect fair market value of any easements or rights-of-way. The valuations below represent estimates based on a per-acre cost negotiated with each tribal government and multiplied by the estimated number of miles of fiber optic cable running through tribal lands and the width of the corresponding electric utility easement. These valuations will be recalculated and recorded in Exhibit A, based on precise boundaries and acreage for tribal ownership determined by final engineering for REDI Net.

Ohkay Owingeh: \$727,273.00

Pojoaque: \$575,757

Santa Clara Pueblo: \$509,091

Tesuque Pueblo: \$424,242

H. Additional contributions of cash or rights-of-way, easements and land made by the a Local Party after the effective date of this Agreement and before the end of the BTOP Grant period will be valued at an amount agreed upon by that Local Party the REDI Net Board and will be counted toward the initial financial contribution of the Local Parties.

Section 4. Roles and Responsibilities of the Parties. The Parties commit to the following roles and responsibilities, subject to the Federal Requirements:

A. REDI NET Board Membership: Each Party shall appoint a representative to and actively participate as a member of the REDI NET Board.

B. Commitment to Purchase Service: Unless prohibited or otherwise limited by any existing service contracts or service arrangements, and subject to the provisions of Section 11 of this Agreement, each Local Party shall purchase services for its community anchor institutions from

REDI Net for a minimum of five (5) years from the Service Agreement date, either exclusively from REDI Net or, if REDI Net is not able to meet the service demands of a Local Party, at the service level that REDI Net can provide to that Local Party. Following the expiration of the five-year Service Agreement term, it is anticipated that the Local Parties will continue to purchase services from REDI Net at a level that will, in the reasonable determination of the REDI Net Board, enable REDI Net to avoid operating losses and will promote open access, sustainability and expansion of REDI Net to serve existing and anticipating demand for services.

C. Procurement of Services During Construction: The procurement decisions of the REDI Net Board during the BTOP Grant period shall be monitored, and to the extent required by the BTOP Grant conditions, ratified or approved by NCNMEDD, provided that such ratification or approval shall not be withheld except to the extent necessary, in the reasonable discretion of NCNMEDD, to assure its compliance with the Federal Requirements.

D. Infrastructure Installation: Each Local Party shall allow the installation of fiber optic cable and associated network equipment upon, through or over its lands without imposing fees, taxes or any other charges on REDI Net or NCNMEDD. No Local Party shall impose fees, taxes or charges of any other kind to any third party owner of utility lines in connection with the installation of fiber optic cable or other improvements to be incorporated into REDI Net. Nothing in this Agreement shall be construed as preventing any Local Party from receiving its appropriate share of gross receipts taxes payable by any person or entity for goods or services provided in connection with the construction or installation of fiber optic cable and associated network equipment under the terms of this Agreement.

E. Rights-of-Way and Easements: Subject to the provisions of Section 11 of this Agreement, where required, each Local Party shall provide rights-of-way or easements for installation of fiber optic cable and associated network equipment without imposing fees, taxes or any other charges to REDI Net or NCNMEDD.

F. Infrastructure Ownership and Federal Security Interest. Each Local Party that is a county government shall own that portion of REDI Net infrastructure situated within its jurisdictional boundaries with the following exceptions: 1) Local Parties that are tribal governments shall own REDI Net infrastructure within their tribal lands, and 2) the City of Espanola shall own existing fiber optic infrastructure which it has committed as an in-kind match to REDI Net in Section 3F of this

Agreement. Infrastructure ownership by the Local Parties is subject to the following provisions:

(i) Due to complex land tenure patterns among tribal and local government jurisdictions, boundaries for tribal land ownership shall be substantially consistent with the tribal lands identified by Jemez Mountains Electric Cooperative for electric rights-of-way.

(ii) An ownership map showing the acreage owned by each Local Party shall be produced during final engineering and shall be incorporated into this Agreement as Exhibit A.

(iii) Infrastructure ownership shall be subject to a Federal Security Interest, established through the Covenant of Purpose, Use and Ownership, which shall be recorded, in the form attached hereto as Exhibit B, in the real property records of Santa Fe, Rio Arriba and Los Alamos Counties, or in the case of Local Parties that are tribal governments, in the land records of each respective tribal government.

(iv) Notwithstanding proportional ownership of infrastructure by each Local Party as described above, the REDI Net Board shall be solely responsible for operating all infrastructure owned by each of the Parties subject to NCNMEDD's oversight responsibility as described in Section 7 below.

Section 5. Exercise of Powers. The REDI NET Board is hereby authorized to exercise any and all of the common powers described in Section 2E of this Agreement without further authorization or ratification by the governing body of each Party.

Section 6. Effective Date, Term and Termination.

A. This Agreement shall be effective upon approval by the New Mexico Department of Finance and Administration ("DFA").

B. The term of this Agreement shall be 20 years, which is the useful life of the project, as provided in the United States Department of Commerce's Covenant of Purpose, Use and Ownership, and may be extended by mutual consent of the Parties at the end of this term.

C. If REDI Net remains suitable for operation beyond the initial 20 year term and some but not all the Parties desire to extend the term of this Agreement, a Local Party may terminate its status as a party to this Agreement but hereby agrees to permit the ongoing use of REDI Net fiber lines and other broadband infrastructure within its jurisdictional boundaries for operation of the network. The terms of such arrangement shall be negotiated by the withdrawing Local Party and the REDI Net Board, and may include, without limitation, purchase or lease of the infrastructure by the REDI Net Board

from the withdrawing Local Party, at reasonable rates determined in reference to the operating budget of REDI Net and in consideration of past improvements made to the infrastructure. The withdrawing Local Party shall not refuse to permit REDI Net's ongoing use of the REDI Net infrastructure within that Local Party's jurisdictional boundaries in a manner that prevents REDI Net's ongoing operation.

Section 7. Appointment of Fiscal Agent; Strict Accountability of all Receipts and Disbursements. NCNMEDD shall act as Fiscal Agent in connection with the administration, disbursement, reporting and monitoring of the BTOP Grant and shall be strictly accountable for all receipts and disbursements thereunder and under this Agreement until construction of REDI Net, transfer of REDI Net assets to the Local Parties have been completed and NCNMEDD has verified that its responsibilities as BTOP Grant recipient have been satisfied. Following expiration of the BTOP Grant Period (as defined in the BTOP Grant requirements), REDI Net Board shall either extend the term of NCNMEDD as fiscal agent, or appoint a new fiscal agent, which in either case shall be strictly accountable for all receipts and disbursements hereunder.

Section 8. Disposition of Property Acquired Pursuant to this Agreement.

A. The Parties anticipate that REDI Net assets will be conveyed to that Local Party as shown in Exhibit A. The Parties anticipate that they will contribute funds or make in-kind contributions as provided in this Agreement, each from sources designated by the governing body of that Local Party or otherwise approved.

B. As provided by the BTOP Grant, surplus funds generated by REDI Net are to be reinvested in REDI Net to upgrade technology and infrastructure of REDI Net, and the parties do not anticipate that other surplus property or funds will remain at the time this Agreement is terminated. Notwithstanding, any surplus property or funds which may remain at the time this Agreement is terminated shall be returned to each Local Party and to NCNMEDD, in proportion to the cash and in-kind contributions made by that Local Party or NCNMEDD; provided that any such distribution of property or funds shall comply with the Federal Requirements.

Section 9. Severability. If any provision, clause, section, subsection or article of this Agreement is found to be invalid, illegal, unenforceable for any reason, the invalidity, illegality or enforceability of such provision, clause, section, subsection or article shall not affect the remaining provisions of the Agreement.

Section 10. Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Act, as provided in Section 11-1-6 NMSA 1978.

Section 11. Obligations Conditioned on Sufficient Annual Appropriations. The obligations of the Local Parties under this Agreement are conditioned upon the availability of sufficient annual appropriations by the governing bodies of the Local Parties.

Section 12. Governing Law. This Agreement shall be governed by the laws of the State of New Mexico; provided that, with respect to any Local Party that is a tribal government, it is hereby recognized that the powers and status of such Party, as a tribal government, is subject to the laws of the United States.

Section 13. Alternative Dispute Resolution. Disputes among Parties arising in connection with this Agreement shall be submitted to mediation, arbitration, or other alternative dispute resolution process, as determined by the REDI Net Board, and to the extent that such process is permissible under the governing law applicable to the disputing Parties.

Section 14. Counterparts. This Agreement may be executed in counterpart originals.

Section 15. Amendment; Addition of Parties in the Future. This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the Parties and approved by the DFA; provided, that the Pueblo de San Ildefonso may, at its election, become a Local Party to this Agreement, and this Agreement, shall be amended accordingly and shall include a description of the financial and/or in-kind contribution to be made by the Pueblo de San Ildefonso. So long as no other provision of this Agreement is amended, the foregoing modifications to this Agreement shall not require approval by DFA.

Section 16. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof.


SIGNATURE PAGE

To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of November 19, 2010

NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT



Nick Salazar, Chairman of the Board

SIGNATURE PAGE

To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of December 17, 2010

PUEBLO OF SANTA CLARA



Governor Walter Dusheno

SIGNATURE PAGE

To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of _____

LOS ALAMOS COUNTY



Michael E. Wismer, Council Chair

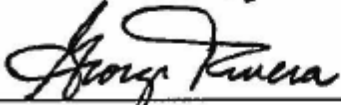
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To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of JANUARY 3, 2011

PUEBLO OF POJOAQUE

A handwritten signature in cursive script, appearing to read "George Rivera", written over a horizontal line.

Governor George Rivera

SIGNATURE PAGE

To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of _____

SANTA FE COUNTY



Virginia Vigil, County Commission Chair

ATTEST:



VALERIE ESPINOZA
COUNTY CLERK

Approved as to form

Santa Fe County Attorney

By:  for Stephen C. Ross

Date: 18 June 2011





Office of the Governor
Pueblo of Tesuque
Route 42 Box 360-T
Santa Fe, New Mexico 87506

SIGNATURE PAGE (1 of 6)

To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of December 21, 2010

PUEBLO OF TESUQUE



Governor Frederick Vigil

SIGNATURE PAGE

To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of 12/16/10

RIO ARRIBA COUNTY

Alfredo Montoya
Alfredo Montoya, County Commission Chair

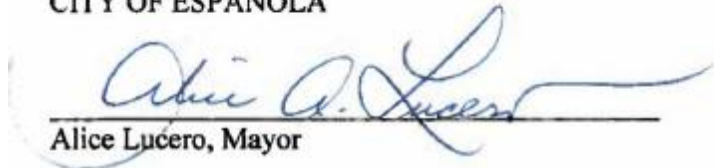
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To

North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement

Dated as of 11/22/10

CITY OF ESPANOLA



Alice Lucero, Mayor

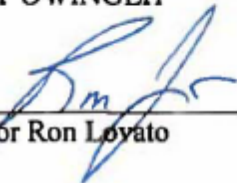
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To

**North Central New Mexico Economic Development District
REDI Net Middle Mile Broadband Network Joint Powers Agreement**

Dated as of _____

OHKAY OWINGEH



Governor Ron Luyato